

VZCZCXRO0655  
PP RUEHAG RUEHBI RUEHCI RUEHLH RUEHPW RUEHROV  
DE RUEHAH #1138/01 2411318  
ZNY CCCCC ZZH  
P 281318Z AUG 08  
FM AMEMBASSY ASHGABAT  
TO RUEHC/SECSTATE WASHDC PRIORITY 1437  
INFO RUCNCLS/ALL SOUTH AND CENTRAL ASIA COLLECTIVE PRIORITY  
RUCNCIS/CIS COLLECTIVE PRIORITY  
RUCNMEM/EU MEMBER STATES COLLECTIVE PRIORITY  
RUEHAK/AMEMBASSY ANKARA PRIORITY 4218  
RUEHBJ/AMEMBASSY BEIJING PRIORITY 2030  
RUEHKO/AMEMBASSY TOKYO PRIORITY 1895  
RUEHIT/AMCONSUL ISTANBUL PRIORITY 2466  
RUCPDO/DEPT OF COMMERCE WASHDC PRIORITY  
RHEBAA/DEPT OF ENERGY WASHDC PRIORITY  
RHMFISS/CDR USCENTCOM MACDILL AFB FL PRIORITY  
RUEHVEN/USMISSION USOSCE PRIORITY 2826  
RUEAIIA/CIA WASHDC PRIORITY  
RHEFDIA/DIA WASHDC PRIORITY  
RHEHNSC/NSC WASHDC PRIORITY  
RUEKJCS/SECDEF WASHDC PRIORITY  
RUEKJCS/JOINT STAFF WASHDC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 03 ASHGABAT 001138

SIPDIS

STATE FOR SCA/CEN; EEB

E.O. 12958: DECL: 08/28/2018

TAGS: [PGOV](#) [EPET](#) [EINV](#) [TX](#)

SUBJECT: TURKMENISTAN: ENERGY COMPANIES HAVE POSITIVE  
FIRST IMPRESSIONS OF NEW PETROLEUM LAW

REF: ASHGABAT 1103

Classified By: Charge Sylvia Reed Curran for reasons 1.4 (b) and (d).

¶1. (C) SUMMARY: Energy companies now operating in Turkmenistan are viewing the new Petroleum Law as a good first step in making it easier to do business here, and see the State Agency for Management and Use of Hydrocarbon Resources' central role in implementing the law as a sign that the government is getting more serious about doing business with foreign companies. However, some have suggested that the law does not appear to have been drafted with the help of international experts, which could mean that a significant number of unaddressed issues could crop up in the near term. The other open-ended question will be the extent to which the law is enforced. END SUMMARY.

¶2. (C) Wintershall's Kal Sandhu offered his first impressions of the new hydrocarbon law (reftel) on August 25, although he had not yet acquired a translation of the entire text. Sandhu did not believe the government had called on any international advisors while drafting the law. During many of his meetings in past months with senior oil and gas officials, he was frequently asked specific questions in order to gather information needed for drafting the text. Sandhu bragged that State Agency Chief Muradov had picked Sandhu's brain about the mechanics of various commercial instruments (article 21). He advised Muradov of the importance of working with international experts, and was encouraged to find that the new law now contains a provision allowing the State Agency to bring in international advisors in the future as it deems necessary (article 7, part 5).

WINTERSHALL MANAGER POSITIVE ABOUT STATE AGENCY PROVISIONS

¶3. (C) In general he was positive regarding the new law. He was encouraged by the section that describes the role and legal status of the State Agency (article 7). His impression was that the State Agency would now be able to operate more independently, have higher status in the government, have its own financial resources, and might become the single, direct interlocutor for foreign energy companies seeking guidance or assistance from the government in their business activities.

¶4. (C) His perspective was that, under this new law, foreign energy companies would funnel all of their government interaction, be it tax, customs, or even security service issues, through the State Agency first. He was uncertain, however, how it would impact his relationship and interaction with Deputy Cabinet Minister Tagiyev, who had always played a key role in working out his company's issues in the past. (COMMENT: Sandhu may well find that little has changed, since previously existing production sharing agreements are governed by the earlier law and procedures, unless both sides agree to changes. END COMMENT.) He opined that the State Agency director's status would likely rise, perhaps to the ministerial level.

#### ARBITRATION PROVISIONS COULD BE A PROBLEM

¶5. (C) Sandhu was not surprised that the law did not specify different arrangements for offshore and onshore contracts. Leaving it out would allow the government to make those decisions on a more flexible national policy basis. He was pleased to see that all arbitration would be conducted in international courts (article 59), but said that the follow-up language suggesting that some disputes would still be handled in Turkmen courts (article 59) undermined the sense of security foreign companies might have about arbitration issues.

#### MONETIZATION COULD CONTINUE TO BE A PROBLEM

ASHGABAT 00001138 002 OF 003

¶6. (C) He remained concerned by the fact that the law is still not very specific regarding the ways in which companies can monetize the hydrocarbon resources they produce. He noted that the Chinese can monetize what they produce, because the Turkmenistan-China pipeline is part of their deal. But other companies can continue to expect a complicated process in working this out with the State Agency. Finally, he remained convinced that the law is only going to be as effective as its implementation, given the serious enforcement and judicial problems that persist here.

CHEVRON: "WE CAN WORK WITH THE NEW LAW"

¶7. (C) Chevron's country manager, a lawyer, was more optimistic. He said the forms of agreement, the licensing procedures, as outlined in the new law, will generally work for foreign companies. He thought the description of the new role of the State Agency will be a change for the better, in that it will be the central governmental authority that companies will deal with (article 7). The new law, he said, appears to be similar to those of many other developing countries. The availability of four different commercial instruments, particularly an agreement on service provision with risk (article 21), is another improvement. He was somewhat concerned that the section describing the State Agency's role made it appear as though the agency itself was a company rather than a government entity. In any case, Uchikura was confident that wherever the law was weak, companies could and would plug the holes by adding specific provisions to their contracts to protect themselves.

BURIED HILL: "THE LAW IS THE BEST IT'S EVER BEEN"

¶8. (C) Buried Hill General Manager Eldar Iskanderov called the new law "the best it's ever been," saying it is now better defined and the State Agency is more authoritative and empowered than ever before. The most significant change for the State Agency, he thought, was the fact that it now will be financially independent and able to make its own choices regarding the expenditure of capital (article 51). Iskanderov was pleased that PSA holders (like Buried Hill) would now be able to employ international accounting standards in the financial paperwork they must regularly submit to the State Agency (article 49). He was less

certain, however, to what degree State Agency personnel will be able to understand the incoming financial information that will be done by those standards.

19. (C) Iskanderov noted that there is a provision in the law relating to "change of control" for companies operating in Turkmenistan. The law now requires a company working in Turkmenistan to acquire written permission from the State Agency to proceed with an international transaction that will result in a change of ownership (article 53). Clearly intended to prevent events such as the Winter 2007 buyout of Burren Energy by ENI, Iskanderov said the provision demonstrates the limit of understanding on the part of the law's drafters regarding the international market. He was pleased, however, to see the tax rate stabilization clause, which states that if the government's tax rate changes during the life of a PSA, the company would keep the rate it started with (article 48). The new law's provision of four different commercial agreement options (article 21) will likely open up many possibilities for companies.

10. (C) COMMENT: We agree that the new petroleum law is much improved over the previous one -- not least, the inclusion of new provisions relating to contractors and sub-contractors, which will help to clear up gray areas under which many of these firms have had to operate in the past. That company representatives are cautiously optimistic that the new law will have an overall positive impact on doing business here is promising. As with any new law, however,

ASHGABAT 00001138 003 OF 003

the ultimate test will rest in its implementation. END  
COMMENT.  
CURRAN